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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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In the Matter of)
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Deferral of Licensing of MTA) PP Docket No. 93-253
Commercial Broadband PCS) ET Docket No. 92-100

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

COMMENTS OF SPRINT TELECOMMUNICATIONS VENTURE

In response to the Federal Communications Commission's ("FCC" or "Commission") Further Notice of Proposed Rule Making dated June 23, 1995 ("Further NPRM"),¹ the Sprint Telecommunications Venture ("STV") hereby submits its comments on the Commission's proposed revised rules for the C block Personal Communications Services ("PCS") auction.

STATEMENT OF INTEREST

STV is a joint venture formed by subsidiaries of Sprint Corporation, Tele-Communications, Inc., Cox Enterprises, Inc. and Comcast Corporation. STV was created in October, 1994 to provide nationwide wireline and wireless telephony services. WirelessCo, L.P. ("WirelessCo"), the wireless component of STV, was granted numerous PCS licenses in the Commission's recent PCS broadband auction for the A

¹ Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Further Notice Of Proposed Rule Making, FCC 95-263 (June 23, 1995).

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and B frequency blocks. STV has pursued and continues actively to explore opportunities to form business relationships with entities eligible to participate in the C block PCS auction. Accordingly, STV is interested in the Commission's rules concerning the C block PCS auction and in particular, STV is interested in ensuring that licenses granted in the auction are not unduly encumbered by legal uncertainty.

DISCUSSION

STV supports the proposal outlined in the Further NPRM. STV strongly supports the Commission's efforts to fulfill its statutory obligations and to ensure that women, minorities and other designated entities are afforded opportunities to participate in the provision of spectrum-based services.² The companies that comprise STV also are committed to these goals.

In this regard, STV agrees that the Adarand decision created legal uncertainty and raised the spectre of extended litigation regarding the C block auction.³ Indeed, the Justice Department recently urged all executive branch departments and federal agencies to review, and if necessary, revise their affirmative action programs to

² See 47 U.S.C. § 309(j)(3)(B).

³ Adarand Constructors, Inc. v. Pena, 63 U.S.L.W. 4523 (U.S. June 12, 1995) (No. 93-1841).

comply with the Adarand ruling.⁴ To avoid delay of both the auction and the introduction of PCS service, STV believes it is prudent for the Commission to adopt the rule changes proposed in the Further NPRM.

First, STV agrees with the Commission's tentative conclusion that the auction provisions concerning female- and minority-owned PCS applicants should be changed because the delay and uncertainty caused by litigation over those procedures could disadvantage all C block license winners.⁵ Revising those provisions likely to face a legal challenge based on Adarand will benefit all C block license winners -- including those controlled by minorities or women -- because it will allow them to receive their licenses in a more expeditious manner, unfettered by legal contingencies.⁶

4 See Memorandum from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice to the General Counsels of Federal Agencies and Departments (June 28, 1995).

5 Further NPRM at ¶8. STV agrees that the five different rules identified by the Commission in the NPRM -- i.e., those involving control group equity structures, affiliation rules, installment payments, bidding credits, and PCS-cellular cross-ownership limits -- are the PCS rules most likely to be subject to legal challenge in light of Adarand.

6 If the Commission does not eliminate the race and gender preferences associated with the C block auction, applicants controlled by minorities or women face a Hobson's choice-- (1) take advantage of bidding credits and preferred payment mechanisms but risk protracted litigation and potential loss of any license they might win, or (2) reject a valuable preference for which they are eligible in order to avoid perhaps more costly litigation.

Changing the rules to minimize the risk of litigation will benefit all applicants by improving their prospects for obtaining financing before the auction. Sources of capital are likely to be more sanguine about investing in C block applicants if it appears that license grants will not be overturned or delayed for an extended period. Similarly, reducing the legal challenges to license winners will allow C Block licensees to make PCS services available more rapidly and to reap the ensuing business benefits. Thus, the Commission's cautious approach not only minimizes the risk of legal challenges and avoids delay, but it also continues to benefit the designated entities at issue.

Second, STV supports the Commission's goal of making "rule changes that are the least disruptive to bidders" and that "minimize the effect of the modified rules on existing business relationships formed in anticipation of the C block auction."⁷ By expanding eligibility for bidding credits and installment payments to include all small business C block applicants, the majority of the proposals in the Further NPRM meet these goals.⁸ In addition, this

7 Further NPRM at ¶2.

8 In contrast, the NPRM's elimination of exceptions to its affiliation rules for minority investors would significantly disrupt existing business relationships by disqualifying investors who would otherwise qualify under this exception. See 47 C.F.R. § 24.720(1)(11)(ii); Further NPRM at ¶19. The Commission could retain this exception by allowing any affiliate of a member of a control group to take advantage (Footnote 8 Continued)

approach ensures that women- and minority-controlled potential applicants who negotiated or formed ventures to participate in the C block auction in reliance upon the existing rules will not face less advantageous rules only weeks before they must begin the bidding process. Because many minority- or woman-owned businesses also qualify as small businesses, the Further NPRM would not undermine many designated entities' business structures or efforts to secure financing. Under the rules proposed by the Further NPRM, most such entities will remain eligible for the auction based on their existing ownership structures and will be able to participate in the auction as planned. This is especially important because C block applicants have had insufficient time to react to the Adarand decision that was issued only three days before the June 15, 1995 application deadline for participation in the C block auction.

(Footnote 8 Continued)

of this exception so long as the affiliate itself would be eligible to participate in the C block auction. See 47 C.F.R. § 24.709(a). Small businesses and minority interests thus would be treated fairly and equally. Moreover, the Commission is incorrect in stating that "all entrepreneur's block licenses" will be subject to delay based on legal challenges concerning this exception. Further NPRM at ¶20. To the contrary, only licensees who took advantage of the exception would be subject to any such challenge.

CONCLUSION

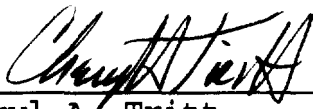
For the foregoing reasons, Sprint supports the proposals in the Further NPRM that minimize disruption to existing arrangements of prospective bidders and that broaden eligibility to use certain mechanisms in the C Block auction. The Commission should promptly issue final rules so that the C Block PCS auction can go forward.

Respectfully submitted,

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Dated: July 7, 1995

CERTIFICATE OF SERVICE

I, Bonnie G. Eissner, do hereby certify that I have this 7th day of July, 1995, hand-delivered copies of the foregoing document to the following:

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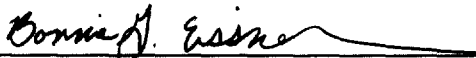
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